

DB 11 2579

Rulemaking Hearing Rules
of
The Tennessee Department of Human Services
Adult and Family Services Division

Chapter 1240-4-7
Report Cards and Rated Licensing for Child Care Agencies

Amendments

Rule 1240-4-7-.05 Re-Evaluations and Reviews of Report Cards and Agency Ratings, is amended by deleting the Rule in its entirety and by substituting instead the following language so that, as amended, the rule shall read:

1240-4-7-.05 Reassessments and Appeals.

(1) Program Reassessment.

Program Reassessment is available in the following circumstances:

- (a) When requested by a child care agency, prior to the Intradepartmental Review provided for in subparagraph (2)(b), to address any new or changed conditions that occurred since the date of the agency's last completed assessment.
 1. The child care agency shall be responsible for any and all costs, as determined by the Department, associated with this Program Reassessment which shall be paid in advance of the Program Reassessment.
 2. The Program Reassessment shall be conducted according to the policies and procedures established by the Department and may utilize all of the rated license component areas, including the Environment Rating Scales.
 3. Bonus Payments.
 - (i) During the period of the reassessment, the availability / amount of any bonus payments made by the Department pursuant to 1240-4-7-.04(10) shall be determined by the results of the most recently completed assessment.
 - (ii) Following completion of the reassessment, the availability / amount of any bonus payments made by the Department shall be determined by the results of the reassessment.
 4. The results of any Program Reassessment conducted pursuant to the provisions of this subparagraph:
 - (i) Shall become effective immediately upon the Department's completion of the Program Reassessment and shall replace, in their entireties, any prior results for program areas which were reassessed; and
 - (ii) Shall not be subject to the appeal process set forth below in paragraph (2).

- (b) When requested by a child care agency following Intradepartmental Review, as an alternative to the administrative hearing provided for in subparagraph (2)(c), to address any new or changed conditions that occurred since the date of the agency's last completed assessment. A Program Reassessment requested by the child care agency pursuant to this subparagraph (b) shall be subject to all provisions specified in subparagraph (a) above.
- (c) When, upon receiving the results of its report card evaluation, the child care agency chooses to appeal the results, pursuant to paragraph (2) below, and the appeal results in a Program Reassessment due to a finding that the initial assessment conducted by the Department, or some part thereof, was invalid.
 - 1. The Program Reassessment conducted pursuant to this subparagraph (c) shall be provided at the expense of the Department.
 - 2. The Program Reassessment shall be conducted according to the policies and procedures established by the Department and may be limited to the component areas found to be invalid on the initial assessment.
 - 3. Bonus Payments.
 - (i) During the period of the reassessment, the availability / amount of any bonus payments made by the Department shall be determined by the results of the most recently completed assessment.
 - (ii) Following completion of the reassessment, the availability / amount of any bonus payments made by the Department shall be determined by the results of the reassessment.
 - 4. The results of any Program Reassessment conducted pursuant to the provisions of this subparagraph:
 - (i) Shall become effective immediately upon the Department's completion of the Program Reassessment and shall replace, in their entirety, any prior results for program areas which were reassessed; and
 - (ii) For this Program Reassessment, the appeal process of paragraph (2) below shall be available.

(2) Appeal Process.

- (a) Upon receiving its results, a child care agency may choose to appeal any part of its report card evaluation.
- (b) Intradepartmental Review.

The appeal process shall begin with the request for an Intradepartmental Review, to be conducted according to the policies and procedures established by the Department.

- 1. The Intradepartmental Review shall provide an informal opportunity for the child care agency to dispute any of the following:
 - (i) The overall agency rating;
 - (ii) The Program Assessment rating or scores; and/or

- (iii) The rating of any other component area.
2. The request for an Intradepartmental Review shall be in writing and shall include:
 - (i) A statement that identifies the specific information and/or rating that is in dispute; and
 - (ii) A statement that identifies the basis upon which the agency is alleging that an error has occurred.
 - (iii) The child care agency shall also submit supporting documentation with its written request.
 - (iv) If the information required in subparts (b)2 (i) and (ii) is not provided by the child care agency, the appeal may be dismissed at the sole discretion of the Department.
 3. Issues considered during the Intradepartmental Review shall be limited to:
 - (i) Whether, at the time of the licensing evaluation, the agency was provided proper credit for compliance with the criteria required in each of the report card component areas; and/or
 - (ii) Whether the agency's rating was otherwise correctly calculated.
 4. Changes made within, or by, the agency after the date of the last complete licensing evaluation or the validity of the evaluation instrument used to conduct the agency's program assessment shall not be considered in the appeal process.
 5. The written request for Intradepartmental Review must be received by the Department within twenty (20) business days following the date of mailing of the notice of the report card evaluation to the child care agency.
 6. Intradepartmental Review shall precede, and must be completed before, any Administrative Hearing and shall not be subject to the contested case provisions of the Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.
 7. In conducting the Intradepartmental Review, the Department may take any of the following actions as deemed appropriate in its discretion:
 - (i) Request additional information from the child care agency and/or third parties;
 - (ii) Examine additional documentation from the child care agency and/or third parties; and/or
 - (iii) Conduct an informal hearing, not subject to the provisions of T.C.A. §§ 4-5-301 et seq., that may include statements from the child care agency and/or third parties.
 8. The Department shall complete the review and render a written decision to the child care agency within forty-five (45) business days of receipt by the Department of the written request for review.

9. Bonus Payments.

- (i) During the Intradepartmental Review process, the agency can elect to receive its bonus payments based upon the results of the previous report card evaluation or based upon the currently disputed report card evaluation.
- (ii) If the agency chooses to receive bonus payments based upon the results of the previous report card evaluation and the Intradepartmental Review does not result in an increase to the agency's score / rating, the agency will be required to refund to the Department the amount of the overpayment, which may be accomplished through recoupment by the Department of future amounts owed to the child care agency.
- (iii) If the agency chooses to receive bonus payments based upon the results of the currently disputed report card evaluation and the Intradepartmental Review results in an increase to the agency's score / rating which warrants an increase in the amount of the bonus payment, the Department will pay to the agency the difference between the two amounts that accrued during the Intradepartmental Review process.

10. Upon completion of the Intradepartmental Review, the agency may request either of the following:

- (i) If dissatisfied with the results of the Intradepartmental Review, an Administrative Hearing, as provided for in subparagraph (c) below; or
- (ii) A Program Reassessment, as provided for in subparagraph (1)(b) above, after which Administrative Hearing shall no longer be available.

(c) Administrative Hearing.

- 1. A request for Administrative Hearing must be submitted to the Department by the agency within ten (10) business days after the mailing date of the Department's written decision from the Intradepartmental Review.
- 2. The issues addressed in the Administrative Hearing are limited to the issues raised during the Intradepartmental Review.
- 3. The Administrative Hearing shall be conducted as a contested case proceeding by the Department's Appeals and Hearings Division according to T.C.A. §§ 4-5-301 et seq.
- 4. The hearing officer shall render a written decision within thirty (30) business days after the hearing and shall send a copy of such decision to the Department and to the child care agency.
- 5. Bonus Payments.
 - (i) If the agency requests an Administrative Hearing, the agency's bonus payments shall be based upon the results of the most recently completed assessment.
 - (ii) If the Administrative Hearing results in an increase to the agency's report card evaluation rating / score which warrants an increase in the amount of the bonus payment, the Department will pay to the agency the difference

between the two amounts that accrued during the Administrative Hearing process.

- (3) Issuance of a New Report Card and/or Rated License.
 - (a) If the results of any process established in paragraphs (1) and (2) above should require the issuance of a new report card, such report card shall be issued to the child care agency within thirty (30) business days of issuance of the written decision.
 - (b) If the results of any process indicated in paragraphs (1) and (2) above should require a change to the overall rating of the child care agency, a new license with the modified rating shall be issued to the child care agency within thirty (30) business days of issuance of the written decision.
 - (c) Immediately upon receipt of the new report card and/or rated license, the child care agency shall post the report card and/or rated license as directed by the Department.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 71-3-502(a)(2), and 71-3-502(j).

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Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:

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I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services on the 27th day of March, 2007.

Further, I certify that the provisions of T.C.A. § 4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking hearing was filed in the Department of State on the 30th day of November, 2006, and such notice of rulemaking hearings having been published in the December 15, 2006 issue of the Tennessee Administrative Register, and such rulemaking hearings having been conducted pursuant thereto on the 16th, 18th, 23rd, and 25th days of January, 2007.

Kim Beals
Kim Beals
Deputy General Counsel
Tennessee Department of Human Services

Subscribed and sworn to before me this 27th day of March, 2007.

Gina D. Coleman
Notary Public



My commission expires on the 25th day of July, 2009.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 24 day of May, 2007 and will become effective on the 17 day of Aug, 2007.

Riley C. Darnell
Riley C. Darnell
Secretary of State

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